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GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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LAND
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**Testimony of
CARTY S. CHANG
Interim Chairperson**

**Before the House Committee on
WATER & LAND**

**Friday, February 06, 2015
9:00 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 830
RELATING TO RESIDENTIAL PROPERTY**

House Bill 830 proposes to exempt privately owned residences from the definition of historic property and would prohibit the review of any project affecting a private residence requiring a state or county permit from review by the Department of Land and Natural Resources (Department) unless the residence has been entered into or nominated by the owner for entry into the Hawaii Register of Historic Places (Hawaii Register). **The Department appreciates the intent of this measure but recommends that it be held without action.**

House Bill 830 addresses a real issue and a perceived problem. During the past fourteen months the Department has made considerable progress on resolving the problem. SECTION 1 of House Bill 830 makes it clear that the perception persists that the Department's reviews of residential permit applications routinely takes far longer than they should. In 2014, the Department reviewed over 3,700 permit applications for residences fifty years old or older. In fact, however, during 2014 on average those reviews took five days, and the most common length for a review was three calendar days. Perception perpetuated in SECTION 1 does not match reality.

It is true that the majority of those reviews were for residences that the Department must regard as historic properties only because they meet the current statutory definition, which makes any building over fifty years old historic. Most of those residences for which permits were reviewed would not qualify for inclusion in the Hawaii Register. Even for homes that would qualify for inclusion in the Hawaii Register, many of the permits reviewed were for activities that would not affect the qualities of the home qualifying it for the Hawaii Register.

- Historic preservation is not simply an abstract “good.” Preserving the character of historic residences preserves the character of neighborhood, makes a property potentially eligible for reductions in country real estate assessments, preserves the character of commercial districts, and is an economic driver both in the district and throughout the islands.
- The principle cause of unnecessary reviews of residential permit applications is that §6E-2, Hawaii Revised Statutes, defines any building more than fifty years old as a historic property.
- Rather than addressing the issue resulting from the age-only definition, House Bill 830 would exempt private residences from permit reviews by the Department.
- The overwhelming majority of residential structures in Hawaii have never been inventoried and evaluated to determine whether or not they are eligible for inclusion in the Hawaii register.
- Exempting residences from review will inevitably result in damage to or destruction of historic homes and to changes in the character of the neighborhoods in which they are located.
- Permit review is triggered when a “project may affect [a] historic property.” Review of the Department’s records makes it clear that many of the projects reviewed by the Department have no potential to affect the character defining features of a historic property. Based on analysis of that review, the Department has developed a list of projects that it has determined have no potential to affect a historic property. That list will be distributed to the counties during the week of February 2, 2015.
 - Had this list been in place in 2014, more than 1,100 projects would not have required review by the Department. A reduction of just over 30% in the number of permits subject to review Department.
 - The Department will also be working proactively with the counties to ensure that they understand and properly utilize the list.
- The Department believes that the solution to this matter requires both an amendment to the definition of historic property that relies on criteria rooted in the historical character of a place rather than just its age.
- Furthermore, the Department believes that a comprehensive survey of buildings is essential to protection and management of the Hawaii’s unique heritage and to resolving the issue of unnecessary permits reviews, the Department notes that planning and design of the inventory, as well as implementation of such a survey will be impossible unless additional resources are provided to the Department for those purposes.

- Senate Bill 504 addresses these matters in a way that resolves the problem without weakening the protection of Hawai'i's unique cultural heritage. The Department strongly prefers the approach in Senate Bill 504.
- The Department recommends that House Bill 830 be held without action.

HISTORIC HAWAII FOUNDATION

TO: Rep. Ryan I. Yamane, Chair
Rep Ty J.K. Cullen, Vice Chair
Committee on Water and Land

FROM: Kiersten Faulkner, Executive Director
Historic Hawaii Foundation

Committee: Friday, February 6, 2015
9:00 a.m.
Conference Room 325

RE: **HB 830, Relating to Residential Property**

On behalf of Historic Hawaii Foundation (HHF), I am writing in **strong opposition to HB 830**. The bill would amend Hawaii Revised Statutes §6E to revise the definition of historic property to exclude private residences not on or nominated by the owner to the Hawaii Register of Historic places from designation as historic property and related review by the Department of Land and Natural Resources in connection with project permit or land use applications.

The historic and cultural resources of Hawaii are a great legacy and irreplaceable treasures. No less than other types of historic properties, the homes and neighborhoods of Hawaii depict the architectural, social and economic history of the Islands. The natural beauty of Hawaii is complemented by its neighborhoods, small towns, vernacular architecture, blend of indoor and outdoor design features, and other characteristics of the distinctive built environment of these islands. The houses of Hawaii are a reflection of its physical setting and social history.

By summarily dismissing all residential property from even considering and evaluating potential historic significance, HB 830 would inevitably lead to the destruction or damage to significant historic properties, and would be to the overall detriment of Hawaii's cultural heritage.

BACKGROUND

The constitution of the State of Hawaii recognizes the value of conserving and developing the historic and cultural property within the State for the public good, and the Legislature has declared that it is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure and enrichment of its citizens.

In order to meet this mandate and to ensure that the historic and cultural resources of Hawaii are treated appropriately, it is necessary to have a framework based on criteria and standards to define and differentiate which properties are subject to the state's historic preservation program.

Currently, HRS §6E-2 defines historic properties as any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

This definition has the advantage of being simple to understand and simple to evaluate, as it relies on a single piece of data: age of construction.

However, that definition is also unnecessarily broad, and assumes that age is equivalent to historic importance. Within the discipline and practice of historic preservation, there are two additional criteria used to screen properties: *historic significance* and *integrity*.

Historic Hawai'i Foundation recommends that additional standards and clarity to the definition of historic property could be achieved by amending HRS §6E-2 to read:

“Historic property” means any building, structure, object, district, area or site, including heiau and underwater site, which is over 50 years old and is significant in Hawaiian history, architecture, archeology, engineering, or culture [new language is underscored].

Unfortunately, the bill is being used as a vehicle to disavow the historic significance of all of Hawai'i's houses, neighborhoods, communities and habitations. This is a disturbing and dangerous approach to a perceived issue that has been overblown, and to which there are better solutions than a blanket redefinition of historic property.

HISTORIC PRESERVATION FRAMEWORK

Proponents of the bill to change the definition of historic property have alleged that the historic preservation review process has delayed the granting of permits by “many months” and “has had a negative impact on the construction industry.”

Their ill-advised proposal would attempt to address this perceived issue not by addressing the actual concern, but rather by pretending that houses cannot be historically significant, and therefore would not be worthy of preservation efforts.

The problem appears to be overstated. The department's analysis of its response times indicates that in 2014, the State Historic Preservation Division review took 5 days on average, and the most common length for a review was 3 calendar days. This is a reasonable turnaround time for any government action, and well within the regulatory parameters.

The construction industry also alleges that historic preservation is a detriment to the industry. This is an extremely shortsighted and ill-informed assessment of the overall effect. National studies of the economic benefits of historic preservation have found¹:

¹ References:

Lahr, Michael L., David Listoken, et al. *Economic Impacts for Historic Preservation in Nebraska*. New Brunswick, New Jersey: Center for Urban Policy Research, Rutgers, The State University of New Jersey, October 2007.

Mandala Research, LLC. “The Cultural and Heritage Travelers Study.” 2009

Rypkema, Donovan D. *The Economics of Historic Preservation: A Community Leader's Guide*. Washington DC: National Trust for Historic Preservation, 1994.

----. 2005 “Economic Sustainability and Historic Preservation.” Speech presented at the National Preservation Conference, Portland, Oregon, October 1, 2005.

Wichman, Wendy. *The Economic Benefits of State Historic Preservation Investment Tax Credits*. Honolulu, Hawai'i: Historic Hawai'i Foundation, 2008.

- **Rehabilitation projects create jobs:** in a typical rehabilitation project, 60%-70% of the total cost is labor. Laborers are almost always hired locally, which supports the local economy, and is a direct and quantifiable benefit for the trades and construction industry.
- **Rehabilitation costs are roughly the same as building new:** if no demolition is required, a major rehabilitation will cost between 12% less and 9% more than new construction. If demolition is included in the new construction costs, rehabilitation costs less by 3%-6%.
- **Historic destinations attract visitors:** cultural heritage travelers on average spend more (\$994 per trip vs. \$611) and travel more often (average 5 trips compared with slightly less than 4). This type of tourism both protects the culture and identity of a place, while also providing economic benefits for the host community.

CONCLUSION

Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. HHF's 850 members and numerous additional supporters work to preserve Hawai'i's unique architectural and cultural heritage and believe that historic preservation is an important element in the present and future quality of life, economic viability and environmental sustainability of the state.

Therefore, Historic Hawai'i Foundation opposes HB 830 and respectfully asks the committee to hold the bill.

Thank you for the opportunity to comment.

BIA-HAWAII

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Testimony to the House Committee on Water and Land

Friday, February 6, 2015

9:00 a.m.

State Capitol - Conference Room 325

RE: House Bill 830, Relating to Residential Property

Chair Yamane, Vice-Chair Cullen, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii **strongly supports** H.B. 830, which proposes to exempt from the definition of "historic property" any private residence that has not been entered, or nominated by the owner of the residence for entry, onto the Hawaii Register of Historic Places. Clarifies that nothing in Chapter 6E, HRS, shall be construed to require a review by the DLNR for any private residence exempted under the new "historic property" definition.

BIA-Hawaii has been, and continues to be, concerned about the unnecessary automatic review of residences that are older than 50 years for at least the past 8 years. SHPD's interpretation of §6E-42 Review of proposed projects has caused many renovation and remodeling type building permits to be routed to SHPD for review.

We recognize that there are many unique residences that are older than 50 years old and architecturally worthy of preservation. The property owners of these structures have the opportunity to secure real property tax relief if they voluntarily place their homes on the register. However, there are also large subdivisions of tract homes around Oahu (i.e. Kaneohe, Hawaii Kai, Halawa, Aiea, Pearl City, Waipahu, etc.) which were constructed in the 1960's that are, or will be, older than 50 years old. Subjecting homeowners in these tract subdivisions to a building permit review by SHPD simply because of the age of the dwelling seems to be unnecessary and unreasonable.

SHPD acknowledged that less than 5% of all homes over 50 years old are architecturally significant and worthy of preservation. However, 100% of 50-year old homes must be subjected to this process. We reiterate that 0% of these homeowners can be compelled to comply with any of SHPD's recommendations.

To give you a sense of the magnitude of this law's impact, 42% of all Hawaii homes will be 50-years or older by 2020 and over 46,000 housing units will turn 50 in the next 5 years. SHPD serves the entire State, so neighbor island residents must route their plans to Kapolei, in addition to their own Planning Departments.

H.B. 830 provides a clean exemption, not open to misinterpretation, which allows the Counties to easily make a determination.

We appreciate this opportunity to express our **strong support** for H.B. 830.



Chamber of Commerce HAWAII

The Voice of Business

Testimony to the House Committee on Water & Land Friday, February 6, 2015 at 9:00 A.M. Conference Room 325, State Capitol

RE: HOUSE BILL 830 RELATING TO RESIDENTIAL PROPERTY

Chair Yamane, Vice Chair Cullen, and Members of the Committee:

The Chamber **strongly supports** HB 830, which exempts from the definition of “historic property” any private residence that has not been entered, or nominated by the owner of the residence for entry, onto the Hawaii Register of Historic Places. Further clarifies that nothing in Chapter 6E, HRS, shall be construed to require a review by the DLNR for any private residence exempted under the new “historic property” definition.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the “Voice of Business” in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state’s economic climate and to foster positive action on issues of common concern.

In recent years, ministerial approvals (i.e. County Building Permits) have been referred to the State Historic Preservation Division for review in accordance with Chapter 6E, Section 42 which states:

“§6E-42 Review of proposed projects. (a) Before any agency or officer of the State or its political subdivisions approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places (Emphasis added).”

SHPD’s interpretation of the law has caused many renovation and remodeling type building permits on houses older than 50 years old to be routed to SHPD for compliance with Chapter 6E HRS. These include homes and entire subdivisions that were constructed in the 1950’s and 1960’s. Each year more and more tract type subdivision homes become eligible simply because they are 50 years old or older.

The volume of permits being submitted has created a backlog at SHPD in the time required to review and process the permits. Furthermore, while SHPD is conducting its review,



the City and County of Honolulu is unable to complete processing the building permit effectively, creating backlogs at two agencies for the same permit.

The proposed bill would simply remove, from the definition of historic property, any private residences that have not been entered, or nominated by the owner of the residence for entry, onto the Hawaii register of historic places. The bill focuses only on vertical residential structures and does not apply to any subsurface work.

We believe that the proposed language would allow for the bulk of work on residential structures to move forward without unnecessary delays, and allow SHPD to focus on residences that are worthy to be placed on the Hawaii Register of Historic Places.

We appreciate the opportunity to express our strong support for H.B. 830.

February 6, 2015

The Honorable Ryan Yamane, Chair

House Committee on Water & Land

State Capitol, Room 325

Honolulu, Hawaii 96813

RE: H.B. 830, Relating to Residential Property

HEARING: Friday, February 6, 2015, at 9:00 a.m.

Aloha Chair Yamane, Vice Chair Cullen and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,400 members. HAR **strongly supports** H.B. 504, which exempts from the definition of "historic property" any private residence that has not been entered, or nominated by the owner of the residence for entry, onto the Hawaii Register of Historic Places. Clarifies that nothing in Chapter 6E, HRS, shall be construed to require a review by the DLNR for any private residence exempted under the new "historic property" definition.

According to the Department of Business, Economic Development, and Tourism's State of Hawai'i Databook 2013, nearly 40% of private residences on Oahu were built in 1969 or earlier. As the number of residences that are 50 years old or older increase over time, it is prudent for the State to reexamine the current processes and procedures regarding historic properties. If nothing is done, far too many tract homes with no historical significance, such as Mililani, Hawaii Kai, and other parts of the State, will fall within the scope of needing a historic property review.

Under Hawaii Revised Statutes ("HRS"), §6E-2, historic property is defined as, "any building, structure, object, area or site, including heiau and underwater site, which is over fifty years old." Additionally, under HRS §6E-42, prior to approval of any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, the State Historic Preservation Division (SHPD) is to be advised.

Prior to any approval, SHPD must be allowed an opportunity for review and comment on the effect of the proposed project on the historic property. Also, SHPD must inform the public of any project proposals submitted to it that are not otherwise subject to the requirement of a public hearing or other public notification. The process has led to delays, with some permits taking months before it is granted. Furthermore, these delays and additional required documents can be time-consuming and costly for homeowners.

Mahalo for the opportunity to testify.

LATE



HB830
RELATING TO RESIDENTIAL PROPERTY
House Committee on Water and Land

February 6, 2015

9:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) Administration will recommend that the Board of Trustees offer the following **COMMENTS** on HB830, which seeks to address perceived delays in permit applications for private residences over fifty years old, by changing the definition of “historic property” to exclude certain types of residential property.

OHA understands that this bill is intended to address an alleged backlog of permit and land use applications for improvements to old houses, due to the perception that the historic preservation review process for such applications results in undue delay. OHA has investigated this matter, and it appears that this perception may not accurately reflect reality: as the State Historic Preservation Division (SHPD) has testified, after a review of 3,000 residential improvement permit applications, the average SHPD processing time was a mere 17 days, with the most common processing time being 5 days. In other words, the apparent delays in processing residential improvement applications are rarely ever due to historic preservation review. However, OHA understands that there may be a need for a legislative statement to restrict the overwhelming number of these applications SHPD currently receives, and to help alleviate the public perception that SHPD is to blame for such delay.

OHA has general concerns over any statutory amendment that could potentially weaken protections for historic sites provided for by Hawai‘i Revised Statutes (HRS) Chapter 6E. However, since protecting historic architecture is not central to our mission, we do not take issue with the desire to develop a more efficient system to reduce the number of old homes required to undergo historic preservation review, where appropriate. OHA acknowledges that reducing the administrative burden of reviewing all residential permit applications may allow SHPD to focus its limited resources to preservation of truly historic homes, cultural sites, and iwi kūpuna.

Accordingly, in order to uphold the intent of this measure, while also minimizing any inadvertent weakening of protections for important historic sites, OHA suggests the Committee’s consideration of the following:

First, in order to ensure that the exemption sought by this measure is sufficiently narrow to avoid complicating the existing historic review processes, or threatening protections for bona fide cultural sites and iwi kūpuna, **we recommend leaving the**

statutory definition of “historic property” intact and, instead, including this exemption in HRS Section 6E-42. Section 6E-42 pertains to historic preservation review of private projects, such as those involving privately-owned residences, and is therefore the most appropriate place to specifically exempt these projects from review.

Second, since HRS Section 6E-10 pertains only to projects on sites listed in the Hawai‘i Register of Historic Places, section 3 of this bill improperly places the exemption language for private, non-listed projects here. Again, placing the exemption in HRS Section 6E-42 will appropriately and fully accomplish the goal of this bill. OHA recommends eliminating the language of section 3 of this bill to avoid unnecessary ambiguity and confusion.

Finally, OHA recommends adding language to clarify that the residential exemption applies to “projects only affecting the existing structure of a private residence,” as bona fide cultural sites may be impacted by activities related to the construction of new structures.

With these amendments, we believe that this bill would satisfy the desire to reduce the perceived burden of historic preservation reviews on homeowners and SHPD, while maintaining adequate protections for Hawaiian cultural sites and iwi kūpuna.

Mahalo for the opportunity to offer comments on this important measure.